

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JUSTIN L. BRUBAKER,

CASE NO. C20-0024-JCC

10 Petitioner,

ORDER

11 v.

12 STATE OF WASHINGTON,

13 Respondent.
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15 This matter comes before the Court on the report and recommendation of the Honorable
16 Michelle L. Peterson, United States Magistrate Judge (Dkt. No. 4). Petitioner seeks relief under
17 28 U.S.C. § 2254 from a 2017 judgment of the Whatcom County Superior Court. (Dkt. No. 3 at
18 1.) Judge Peterson recommends that the Court dismiss Petitioner’s *habeas* petition because he
19 has not exhausted the remedies available to him in state court. (Dkt. No. 4 at 2.) Petitioner
20 appears to have filed objections in the form of a motion to show cause. (*See* Dkt. No. 5.) In his
21 motion, Petitioner argues that he does have to exhaust his federal constitutional claims in state
22 court because state courts lack subject matter jurisdiction to hear such claims. (*See id.* at 2–3.)

23 Petitioner is mistaken. “Federal law is enforceable in state courts . . . because the
24 Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the
25 state legislature.” *Howlett v. Rose*, 496 U.S. 356, 367 (1990). Consequently, state courts have the
26 power to hear federal constitutional claims. *Id.* Congress was well aware of this power when it

1 enacted the federal *habeas* statute. And it required, as a matter of federal-state comity, that
2 inmates give state courts ““an ‘initial opportunity to pass upon and correct’ alleged violations
3 of . . . prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (quoting
4 *Wilwording v. Swenson*, 404 U.S. 249, 250 (1971)). Petitioner did not comply with this
5 requirement because he never presented any of his federal *habeas* claims to Washington’s courts
6 for review. (See Dkt. No. 3 at 5–12.) Accordingly, the Court OVERRULES Petitioner’s
7 objections, DISMISSES Petitioner’s motion to show cause (Dkt. No. 5), ADOPTS Judge
8 Peterson’s report and recommendation (Dkt. No. 4), DISMISSES Petitioner’s *habeas* petition
9 (Dkt. No. 3) without prejudice, and DENIES Petitioner a certificate of appealability.

10 DATED this 2nd day of March 2020.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE